

Forrest, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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RAMSEY BAINES, AKEEM MEALING,

Plaintiffs,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
JOHN FRANK (TAX ID. 938500), POLICE
OFFICER MICHAEL PERULLO (TAX ID. 937282),
POLICE OFFICER BURT ANTOINE (TAX ID.
939877), SGT. ROBERT BRACERO (TAX ID.
924973), CAPT. COYLE (TAX ID. 895321),

Defendants.

X

**STIPULATION OF
SETTLEMENT AND ORDER OF
DISMISSAL**

11 Civ. 2846 (KBF)

WHEREAS, plaintiffs Ramsey Baines and Akeem Mealing commenced this action by filing a complaint on or about April 27, 2011, and an amended complaint on September 28, 2011, alleging that defendants City of New York, Captain Michael Coyle, Sergeant Robert Bracero and Police Officers John Frank, Michael Perullo and Burt Antoine violated plaintiffs' federal civil and state common law rights; and

WHEREAS, defendants have denied any and all liability arising out of plaintiffs' allegations; and

WHEREAS, the parties now desire to resolve the issues raised in this litigation, without further proceedings and without admitting any fault or liability;

WHEREAS, plaintiffs have authorized their counsel to settle this matter on the terms set forth below;

WHEREAS, the City of New York served plaintiffs Ramsey Baines and Akeem Mealing with Rule 68 Offers of Judgment on February 1, 2012; and

WHEREAS, plaintiffs Ramsey Baines and Akeem Mealing each accepted the City of New York's Rule 68 Offers of Judgment on or about February 2, 2012;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed against defendants, with prejudice, and without costs, expenses, or attorneys' fees in excess of the amount specified in paragraph "2" below.

2. The City of New York hereby agrees to pay plaintiff Ramsey Baines the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars and plaintiff Akeem Mealing the sum of Two Thousand Five Hundred (\$2,500.00) in full satisfaction of all claims, plus reasonable costs, expenses and attorneys' fees up to February 1, 2012. In consideration for the payment of this sum, plaintiffs agree to dismissal of all the claims against the defendants and to release the defendants City of New York, Captain Michael Coyle, Sergeant Robert Bracero and Police Officers John Frank, Michael Perullo and Burt Antoine, and any present or former employees and agents of the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all liability, claims, or rights of action alleging a violation of plaintiffs' civil rights, from the beginning of the world to the day of the date of the General Release, including claims for costs, expenses, and attorneys' fees.

3. Plaintiffs have assigned their rights to attorneys' fees, expenses, and costs to their attorney, Robert Marinelli, Esq.

4. Plaintiffs shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a General Release based on the terms of paragraph 2 above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to

tendering the requisite documents to effect this settlement, plaintiffs shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26.

5. Counsel for plaintiffs and defendants will resolve plaintiffs' claims for reasonable attorneys' fees, expenses and costs and payment for those sums will be made directly to plaintiffs' counsel. If the matter is not resolved by counsel for the parties without judicial intervention, counsel for either party may proceed by motion to seek a determination of reasonable attorneys' fees, expenses and costs.

6. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiffs' rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. Neither the filing of the complaint in this action, the allegations in the complaint, nor the settlement of this action shall be asserted by plaintiffs or their counsel in any other litigation or proceeding as evidence of wrongful conduct on the part of the City of New York or any present or former employees or agents of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

7. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

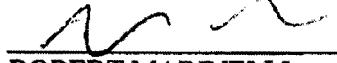
8. Plaintiffs agree to hold harmless the defendants regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter.

If conditional and/or future anticipated Medicare payments have not been satisfied, defendants reserve the right to issue a multiparty settlement check, naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

9. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York
2/16, 2012

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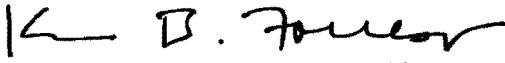
By: 
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By: 

MATTHEW J. MODAFFERI
Assistant Corporation Counsel

SO ORDERED:


HON. KATHERINE B. FORREST
UNITED STATES DISTRICT JUDGE